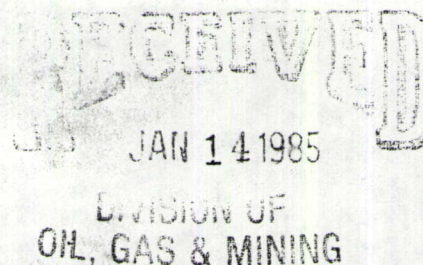


STATE OF UTAH  
NATURAL RESOURCES & ENERGY  
Water Rights

1636 West North Temple • Salt Lake City, UT 84116 • 801-533-6071

Scott M. Matheson, Governor  
Temple A. Reynolds, Executive Director  
Dee C. Hansen, State Engineer

January 11, 1985



Ms. Susan C. Lunner  
Division of Oil, Gas and Mining  
355 West North Temple  
3 Triad Center  
Salt Lake City, Utah 84180-1203

Re: Tug Mine

Dear Ms. Lunner:

Your letter and attached materials dated January 4, 1985, have been referred to me by Ms. Dorothy Boulton. I think this matter raises two issues; namely:

1. The diversion of water for potential use.
2. The creation of a reservoir or dam to impound water.

I have attached copies of three sections of the Utah Code which clarify the situation.

The appropriation of water for any use must follow the procedure in Section 73-3-1. If the reclamation of the site involves a pond for stockwatering, a water right must be established prior to the use of the water.

Section 73-5-12 states that before commencing construction of or any dam or reservoir, written notice must be given to the State Engineer. He then may require plans and specifications as provided in 73-5-5.

I am forwarding a copy of this letter to Western States Minerals for their information.

If you have any further question or comments, please feel free to call on me.

Sincerely,

A handwritten signature in dark ink, reading 'Robert L. Morgan'.

Robert L. Morgan, P.E.  
Directing Dam Safety Engineer

RLM:cp

cc: Western States Minerals Corporation  
Dorothy Boulton



## TITLE 73

## WATER AND IRRIGATION

## CHAPTER 3

## APPROPRIATION

**73-3-1. Appropriation — Manner of Acquiring Water Rights.**

Rights to the use of the unappropriated public waters in this state may be acquired only as provided in this title. No appropriation of water may be made and no rights to the use thereof initiated and no notice of intent to appropriate shall be recognized except application for such appropriation first be made to the state engineer in the manner hereinafter provided, and not otherwise. The appropriation must be for some useful and beneficial purpose, and, as between appropriators, the one first in time shall be first in rights; provided, that when a use designated by an application to appropriate any of the unappropriated waters of the state would materially interfere with a more beneficial use of such water, the application shall be dealt with as provided in section 73-3-8. No right to the use of water either appropriated or unappropriated can be acquired by adverse use or adverse possession.

**73-3-2. Application for Right to Use Unappropriated Public Water — Necessity — Form — Contents — Validation of Prior Applications by State or United States or Officer or Agency Thereof.**

Any person who is a citizen of the United States, or who has filed his declaration of intention to become such as required by the naturalization laws, or any association of such citizens or declarants, or any corporation, or the state of Utah by the chairman of the commission of publicity and industrial development, the fish and game commissioner, the executive secretary of the state land board or the chairman of the state road commission for the use and benefit of the public, or the United States of America, in order hereafter to acquire the right to the use of any unappropriated public water in this state shall, before commencing the construction, enlargement, extension or structural alteration of any ditch, canal, well, tunnel or other distributing works, or performing similar work tending to acquire such rights or appropriation, or enlargement of an existing right or appropriation, make an application in writing to the state engineer. Such application shall be upon a blank to be furnished by the state engineer, and shall set forth



## CHAPTER 5—ADMINISTRATION AND DISTRIBUTION

## Section

73-5-5. Construction and repair of dams—Submission of plans to engineer for approval—Supervision and inspection—Payment of expenses—Penalty for violation—Exceptions.

73-5-5. Construction and repair of dams—Submission of plans to engineer for approval—Supervision and inspection—Payment of expenses—Penalty for violation—Exceptions.—Duplicate plans, drawings and specifications for any impounding dam which will impound more than twenty acre-feet of water, shall be submitted to the state engineer for his approval, thirty days before construction thereof shall begin. He shall examine such plans, drawings and specifications and, if he approves the same, he shall return one copy of each of such plans, drawings and specifications with his approval, to the person submitting the same, and file the other in his office. If the state engineer disapproves such plans, drawings, or specifications, or any part thereof, he shall return the same for correction and revision. Until the approval of plans, drawings and specifications has been obtained the construction and use of such dam is prohibited. The state engineer may keep an inspector on any such dam during the construction or repair thereof to see that the work is done in accordance with the plans, drawings and specifications, and he may require the person constructing the same to make any additions or alterations during the construction which he considers necessary for the security of the work, the safety of persons, or the protection of property. Any person beginning the construction of any such dam before the plans, drawings and specifications shall have been approved by the state engineer, or proceeding with such work without first having given the state engineer thirty days' notice thereof, or proceeding with such construction work in the absence of an inspector appointed by the state engineer, should one be required by him, or without complying with the requirements made by the state engineer in pursuance of this section, is guilty of a misdemeanor, and each day of violation of this section shall constitute a separate offense and be separately punishable. The applicant shall pay to the state engineer all expenses incident to the necessary examination. Whenever such an inspector has been appointed by the state engineer, the applicant shall pay to the state engineer in advance a sum sufficient to pay the salary and expenses of keeping such inspector on such dam during the construction thereof. This section shall apply to new construction and to repair and alteration of old structures. If at any time in the judgment of the state engineer, any dam not requiring duplicate plans, drawings and specifications to be filed with the state engineer, does constitute a hazard to life or property, the state engineer may then require submission to him of duplicate plans, drawings and specifications as provided in this act; and provided further, that if any dam constructed or to be constructed under the provisions of this act if the state engineer after inspection, deems that the construction or repair of any such dam does not constitute a hazard to life or property he may then waive the requirement of presentation of duplicate plans, drawings and specifications as provided in this act.



affected. If within 10 days after notice of such requirement as provided in this section, the owner, lessee or person having control of the water affected, has not commenced to carry out such requirement, or if he has commenced to comply therewith but shall not thereafter proceed diligently to complete the work, the state engineer may forbid the use of water from such source until the user thereof shall comply with such requirement. Failure to comply with any requirement made by the state engineer in accordance with the provisions of this section shall constitute a misdemeanor. Each day that such violation is permitted to continue shall constitute a separate offense.

73-5-10. **Repealed.**

73-5-11. **Repealed.**

73-5-12. **Owners of reservoirs to supply data to state engineer — Install gauges.**

Within six months after the enactment hereof, every owner of existing reservoirs or dams used to impound any water whatsoever, shall notify the state engineer in writing of the name of such dam or reservoir, the general location thereof with reference to section, township, and range, city, town or highway or to a prominent and permanent natural object if located within two miles therefrom and approximate capacity of the reservoir, and height of the dam, and shall file with the state engineer, plans, drawings, and specifications; provided, that if the dam or reservoir is described in any application or plans and specifications on file in the state engineer's office, only the number of the application or the name of the applicant need be given.

This section shall apply to dams and reservoirs constructed prior to March 12, 1903, and those constructed thereafter for which no plans, drawings, and specifications are on file in the state engineer's office; provided stockwatering ponds of 10 acre-feet or less shall be exempt from the requirements of this chapter regardless of the height of the impounding dams, unless, after inspection, the state engineer shall determine that danger to life or property may be involved.

Before commencing the construction of any dam or reservoir not affected by the provisions of section 73-5-5, written notice thereof shall be given to the state engineer which shall contain the information required by the preceding paragraph.

Every owner of a dam which dam impounds more than 50 acre-feet of water shall, within six months after the effective date of this act, install a gauge of a type approved by the state engineer with reference to a permanently established bench mark located on either

abutment or in the vicinity thereof where it cannot be disturbed, which will indicate the elevation of the water and the capacity of the reservoir with respect to the flow line of the outlet, the flow line of the spillway, and the top of the dam.

In case of the failure of any owner of a reservoir or dam to comply with the provisions of this section within the time specified, the state engineer may bring an action in the name of the state to enforce compliance therewith.

**73-5-13. Notice of claim to surface or underground water not otherwise represented — Filing — Form — Information and proof required — Corrections — Fee — Prima facie evidence of rights.**

All claimants to the right to the use of water, including both surface and underground, whose rights are not represented by certificates of appropriation issued by the state engineer, by applications filed with the state engineer, by court decrees or by notice of claim heretofore filed pursuant to law, shall file notice of such claim or claims with the state engineer on forms furnished by him setting forth such information and accompanied by such proof as the state engineer may require, including but not limited to the following:

The name and post-office address of the person making the claim; the quantity of water claimed in acre-feet; and/or the rate of flow in second-feet; the source of supply; the priority of the right, the location of the point of diversion with reference to a United States land survey corner, the place, nature, and extent of use; the time during which the water has been used each year and the date when the water was first used. A notice of claim may be corrected by filing with the state engineer a corrected notice designated as such and bearing the same number as the original claim. No fees shall be charged for filing a corrected notice of claim.

Such notices of claim, or claims, as provided in this section, shall be prima facie evidence of claimed right or rights therein described.

**73-5-14. Determination by state engineer of watershed to which particular source is tributary — Publications of notice and result — Hearing — Judicial review.**

The state engineer shall have the power to determine for administrative and distribution purposes the watershed to which any particular stream or source of water is tributary. Said determination may be made only after publication of notice to the water users. Said publication of notice shall be made in a newspaper or newspapers having